

**REMARKS**

Claims 5-9 are **allowed**.

Applicant wishes to thank Examiner Kasenge for the helpful comments presented in the "Response to Arguments".

Applicant respectfully **traverses** the rejection of claims 1-4 under 35 U.S.C. § 102(b) as being anticipated by (lacking novelty over) Focke '811, insofar as this rejection may be applied to the currently amended claims 1 and 2 (claims 3 and 4 are canceled).

The preamble of claim 1 has been amended to recite that "a control means (30) [is] provided for executing a control program, in accordance with which it is possible to activate one or more production units for carrying out a production or packaging process by means of predeterminable digital or analog output values at outputs (42) of the control means, with individual output values or outputs (42) being provided for activating or deactivating individual actions at the production unit that is actuated with the respective output value or output (42)". These recitations are derived from the original claims 3 and 4.

The characterizing part of claim 1 has been amended to recite that "the performance-limiting device (53) for reducing the performance level of individual production units or of all the production units [is] configured such that it overwrites measures of the control means (30) after receiving the activating signal (58), namely by activating or deactivating individual output values or outputs (42) differing from the activation or deactivation of these output values or outputs (42) [previously] made by the control program". These recitations also are derived from the original claims 3 and 4 as well as from the original specification, such as on page 7 thereof.

**The Claimed Invention Would Not Have Been Obvious from the Prior Art**

As recited in amended claim 1, the performance-monitoring device of the invention is **configured such** that it **overwrites measures of the control means for the production units**. Individual output values or outputs of the control means are activated or deactivated by the "performance-limiting device" **differently** from the activation or deactivation carried out previously by the control program. It is precisely this feature which makes it possible to limit production and finishing installations to performance levels that lie below the maximum possible performance level of the respective installation. The related aspects of this feature will be discussed in more detail below:

An installation **without the invention's** "performance-limiting device" is capable of achieving the respective maximum performance level theoretically possible. The operator of the installation can specify in each case the level of performance to be executed. Even the maximum performance level theoretically possible can be specified. The control programs of the installation are executed in a specific, predetermined manner corresponding to the respective performance level specified.

In an installation **with the invention's** "performance-limiting device", the **control programs** themselves are executed in an identical manner according to the specified performance level, **independently** of whether the operator may have specified an "excessive" performance level. If the operator attempts to specify a performance level that is greater than that previously warranted by the manufacturer of the installation, the control programs will in this case also continue to generate in the regular fashion the outputs or output values which match

this inadmissibly excessive performance level. However, at this point the invention's separate performance-limiting device is actuated. The values supplied by the control programs as part of a "normal" operation are in this case actively **overwritten** by the performance-limiting device.

Focke '811 fails to disclose any performance-limiting device configured in such a manner. Even if this reference were assumed, *arguendo*, to teach anything even resembling a **performance**-limiting device – which is disputed by Applicant –, such a device is at best a functional **component** of the control program for regulating the production units. The control program of Focke '811 is configured such that it initiates a shut-off process for the entire production and packaging installation when a certain, pre-specified desired quantity of products has been reached by the quantity of products actually made. The **control program itself** thus specifies the situation in which the installation is to be shut down and – to follow the viewpoint of the Examiner – the "performance" of the installation is limited.

Thus, Focke '811, in **contrast** to the claimed invention, fails to provide a **performance-limiting device that overwrites output values or outputs specified by the control program**. Instead, the control program, itself, specifies all output values or outputs, even when the performance level of the installation is – supposedly – limited.

The performance limitation feature of the claimed invention, on the other hand, **overwrites** the output values or outputs generated by the control program. This is a major distinction, as the teaching of Focke '811 would not make it possible to limit the ability to call up performance levels of the installation with respect to a performance level warranted to the customer.

Thus, and for the reasons explained above, Applicant respectfully submits that claims 1 and 2 are both novel and non-obvious, and Applicant respectfully requests the Examiner to reconsider and withdraw the rejection under 35 U.S.C. § 102(b) and to find the amended claim 1 to be novel, patentable and allowable, along with its dependent claim 2 (2/1) which is novel, patentable and allowable because it inherits the limitations of its parent claim 1, and also because of the added limitations which certainly are not disclosed or suggested in Focke '811.

Therefore, Applicant respectfully requests the Examiner to find the application now to be in condition for allowance with **all of claims 1, 2 and 5-9**; however, if for any reason the Examiner feels that the application is not now in condition for allowance, he is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Applicant files concurrently herewith a Petition (with fee) for an Extension of Time of Two Months. Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this application, and any required fee for such extension is to be charged to Deposit Account No. 19-4880. The Commissioner is also authorized to charge any

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additional fees under 37 C.F.R. § 1.16 and/or § 1.17 necessary to keep this application pending in  
the Patent and Trademark Office or credit any overpayment to said Deposit Account No. 19-4880.

Respectfully submitted,

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